INDEX.

PAGE

Statement 1

Argument 11

Conclusion 18

CITATIONS

Cases:

In Re Anderson, 370 Ill. 515, 520 17

Bruce v. Department of Registration, 26 Ill. 2d 612, 187 N. E. 2d 711 (1963) 15

Commissioner of Internal Revenue v. Heininger, 320 U. S. 467, 64 S. Ct. 249 (1943) 12, 15

Farley v. Heininger, 105 F. 2d 79 (1939); certiorari denied, 308 U. S. 587 (1939) 4

Menning v. Department of Registration, 14 Ill. 2d 553, 153 N. E. 2d 52 (1958) 15

People ex rel. Chicago Dental Society v. A A A Dental Laboratories et al., 8 Ill. 2d 330, 134 N. E. 2d 285; review denied, 352 U. S. 863 (1956) 6, 7

State of Wisconsin v. Josefsberg, 275 Wis. 142, 81 N. W. 2d 735, 63 A L R 2d 1071 (1957) 17

Statutes:

Cahill Illinois Revised Statutes, 1927, Chapter 91, Paragraph 78 14

Cahill Illinois Revised Statutes, 1933, Chapter 91, Paragraph 88 (2) 14

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1964.

NO. 1078

S. B. HEININGER,

Petitioner,

vs.

DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, WILLIAM SYLVESTER WHITE, Director of Registration and Education, and EDGAR T. STEPHENS,

Respondents.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

STATEMENT

Because Petitioner's Statement is deemed to be wholly inadequate and incomplete, the following Statement is submitted for consideration by the court.

Following Petitioner's licensure to practice dentistry in Illinois in 1924 (R. 145), he occupied office space at various addresses in Chicago, Illinois until 1938 (R. 146-154).

From 1938 to approximately 1948, Petitioner was out of the practice of dentistry and lived on a farm in Wisconsin (R. 157-8). Thereafter, Petitioner returned to Chicago and resumed the practice of dentistry at various places (R. 150-1).

In about 1926, Petitioner started a dental laboratory business at 2800 West Belmont Avenue, Chicago, Illinois, and was there until about 1931 (R. 236). He employed other technicians at that address and it was there that he first engaged in the mail order denture business (R. 237).

Petitioner's procedure did not include taking impressions of patients at the laboratory location (R. 249). Instead, he mailed impression trays, impression material, and instructions to his patients and they took their own impressions and mailed them back to Petitioner (R. 248). The dentures were then made in the laboratory and mailed to the patients, who tried the dentures in their own mouths to determine if they fit (R. 248). If the patients decided that the dentures did not fit properly, they were invited to mail them back to Petitioner and tell him about it, and he would make adjustments (R. 248).

Petitioner's mail order denture business grew until it was worldwide (R. 243). The business was obtained through the medium of national advertising, in newspapers and magazines (R. 243). In about 1931 Petitioner moved his business to 440 West Huron Street, Chicago, where it continued to grow (R. 243). The number of his employees grew from 10 to 60 (R. 245-6). No other dentists were in this group (R. 246). Petitioner's business reached a gross in one year of $231,000.00 (R. 244). Petitioner testified his advertising budget never exceeded $3,000 per month (R. 245). However, in the case cited at page 4 of the printed Petition herein the court refers to gross income from Pe-

titioner's business in 1937 and 1938 as having been $287,000.00 and $150,000.00 respectively.

In the hearings before the State Board of Dental Examiners, when Petitioner was first asked whether he had been in the mail order denture business during the period 1926 to 1938, he refused to answer on the ground that to do so might tend to incriminate him (R. 162). He made a similar refusal, for the same reason, when he was asked if he withdrew from the mail order denture business and went to the farm in Wisconsin after the United States postal authorities issued a fraud order against him (R. 162-2).

When Petitioner was shown Relator's Exhibits 12 to 24, inclusive, comprising advertisements from various publications, such as Grit Newspaper, Rural Progress Magazine, Illustrated Mechanics Magazine, The Household Magazine, and others, he admitted that this advertising copy, much of which included Petitioner's own photograph and facsimile signature, could be his (R. 250-8). This advertising copy included a 60-day trial offer, with a guarantee of satisfaction or money would be refunded, also a claim that the customer would save $10.00 to $50.00 and more, an offer of free impression material and directions, a statement that Petitioner's methods insured satisfaction, testimonial statements supposedly made by satisfied customers, pictorial representations of upper and lower dentures, and a photograph of Petitioner (Rel. Ex. 13; R. 417, 296).

Another of Petitioner's advertisements included the featured words "Lowest Prices", and also the statements: "You Can Look Younger At Once", and "Well-fitting and Guaranteed Unbreakable" (Rel. Ex. 16; R. 420, 296).

After a customer made inquiry, Petitioner sent him a price list such as Relator's Exhibit 32, showing prices ranging from $6.85 to $49.00 per denture and the trade-

names "Fit-well" and "Porcalite" (Rel. Ex. 32; R. 439, 296). Petitioner admitted he used the name "Fit-well" in connection with plates he sold and that "Porcalite" could be a name he used (R. 264).

On January 10, 1936, a complaint was filed against Petitioner before the Federal Trade Commission regarding representations Petitioner had made in connection with his mail order denture business, and under date of July 6, 1936, pursuant to a stipulation of facts entered into by Petitioner and the Commission, a cease and desist order was issued against Petitioner using certain statements in his advertising (Rel. Ex. 9; R. 55-59, 211).

On February 19, 1938, the United States Post Office Department issued a fraud order against Petitioner to stop further use of the mails in the conduct of Petitioner's mail order denture business (Rel. Ex. 10; R. 374-414, 224).

Petitioner then applied to the United States District Court for the District of Columbia (not the Federal District Court for the Northern District of Illinois, as indicated at page 3 of the Petition) and on June 6, 1938 obtained an injunction against enforcement of the fraud order. The Postmaster General appealed from the injunction order and the United States Court of Appeals for the District of Columbia (not the Court of Appeals for the Seventh Circuit, as stated at page 3 of the Petition) reversed the decision of the trial court (*Farley* v. *Heininger*, 105 F. 2d 79 (1939); *certiorari* denied, 308 U. S. 587 (1939)). Pursuant to the mandate of the United States Court of Appeals for the District of Columbia, an order was entered October 27, 1939 by the United States District Court for the District of Columbia dissolving the injunction (Rel. Ex. 11; R. 415, 224).

The gist of the charges made against Petitioner in the *Post Office Department* case was that he made fraudulent representations in his advertising about his special system, which he could not fulfill, that his procedure for having customers take their own impressions omitted several processes absolutely vital to securing properly fitting and functioning dentures, that a large part of Petitioner's letters of commendation were obtained through promises by Petitioner of a reward in the form of gifts, that in printing testimonial letters Petitioner deleted important statements therein or altered them, and that Petitioner's representations about the personal supervision of the manufacture or repair of dentures sold by him, as well as other parts of his advertising, were false and fraudulent (R. 59-61).

After the Post Office Department fraud order finally became effective by virtue of dissolution of the above mentioned injunction on October 27, 1939, Petitioner lived on a farm in Wisconsin for nine or ten years, after which he retured to Chicago (R. 157-8).

From 1948 to about 1957, Petitioner practiced dentistry at various locations in Chicago, although his testimony covering this period is confusing and inconsistent (R. 149-156, 159). From 1957 to 1959, approximately, Petitioner was associated with an advertising dental laboratory operated by one Charlotte Heins, under the name "Clark Dental Laboratory" at 2656 North Clark Street, Chicago, Illinois (R. 165-173). Petitioner rented office space and equipment from this laboratory for $30.00 per month under a verbal, month to month lease (R. 172). This included a reception room, an operating room, electricity, water, and equipment in the operating room, including the dental chair (R. 168, 171). Petitioner owned some of the tools and instruments, including a majority of the impression trays (R. 169). Gen-

erally, Petitioner purchased the materials he used, although some were furnished by the laboratory (R. 171). Petitioner was at the Clark Dental Laboratory premises on the average of three days per week (R. 170).

While Petitioner was renting space from Charlotte Heins at Clark Dental Laboratory, the laboratory was carrying display advertising in the Chicago Red Book Classified Telephone Directory, including the words "Specializing In Emergency Repairing, Duplicating and Making of Dental Plates" (Rel. Ex. 4; R. 357, 198); (Rel. Ex. 7; R. 360, 199). Such display advertising was held to be a violation of Section 5a of the Illinois Dental Practice Act in the case of *People ex rel. Chicago Dental Society* v. *AAA Dental Laboratories et al.*, 8 Ill. 2d 330, 134 N. E. 2d 285; review denied, 352 U. S. 863 (1956), in which case said Charlotte Heins, d/b/a Clark Dental Laboratory, was a party defendant and was found guilty of practicing dentistry without a license and was enjoined from further violations.

At the same time, Petitioner's name was listed in the Chicago Red Book Classified Telephone Directory under the classification "Dentists", showing in the 1959 Directory his addresses as being 3623 West Armitage Avenue and 2656 North Clark Street, and in the 1960 Directory showing his address as being only at 2656 North Clark Street, the address of Clark Dental Laboratory, which listings Petitioner claimed were in error (Rel. Ex. 5; R. 350, 198) (Rel. Ex. 8; R. 361, 199).

Petitioner testified that at the time of the hearing before the Illinois State Board of Dental Examiners on July 18, 1960 he was practicing dentistry at 954 Belmont Avenue, Chicago, Illinois and had been at that address approximately 14 or 15 months (R. 174). He also had operated a dental laboratory at that address (R. 174). Howard Os-

burn, known to Petitioner for 5 or 6 years, had previously operated a dental laboratory at the same location under the name "Ashland Belmont Dental Laboratory" (R. 175). Petitioner continued to use this laboratory name after he rented the premises (Rel. Ex. 1, 2, 3; R. 356, 186). Howard Osburn was also a defendant in the above mentioned case of *People ex rel. Chicago Dental Society* v. *AAA Dental Laboratories et al.* and was also enjoined from further violations of the Illinois Dental Practice Act, including Section 5a relating to advertising.

In the 1960 issue of the Chicago Red Book Classified Telephone Directory, a display advertisement appeared at page 570 under the name of Ashland Belmont Dental Laboratory (Rel. Ex. 6; R. 570, 204).

On March 28, 1960, Edgar T. Stephens, Relator before the State Board of Dental Examiners, filed a complaint with the Department of Registration and Education which included charges covering a substantial portion of Petitioner's professional career, 1926 to 1939, and 1959-60 (R. 43-65). Paragraphs 2 to 5, inclusive, of the complaint covered Petitioner's professional association with Clark Dental Laboratory, his operation of Ashland Belmont Dental Laboratory, and the Classified Telephone Directory display advertising carried under the names of both laboratories (R. 43-45). Paragraphs 6 to 23, inclusive, of the complaint covered development of Petitioner's mail order denture business, his advertising activities, his representations and promises to the public, his difficulties with the Federal Government, the Federal Trade Commission stipulation and cease and desist order, and the Post Office Department fraud order which terminated Petitioner's use of the mail for his denture business (R. 45-61).

Hearings were held July 18, November 29, and November 30, 1960, with Relator, Edgar T. Stephens, and Petitioner

testifying (R. 144-324). Relator's Exhibits 1, 2 and 3 comprised photographs by Mr. Stephens taken October 22, 1959 of Petitioner's Ashland Belmont Dental Laboratory premises (Rel. Ex. 1, 2, 3; R. 356, 186). Relator's Exhibits 4-8, inclusive, consisted of display advertising in the 1959 and 1960 Chicago Red Book Classified Telephone Directories for Clark Dental Laboratory and Ashland Belmont Dental Laboratory (Rel. Ex. 4; R. 357, 198); (Rel. Ex. 5; R. 350, 198); (Rel. Ex. 6; R. 570, 204); (Rel. Ex. 7; R. 360, 199); (Rel. Ex. 8; R. 361, 199).

The remainder of Relator's Exhibits comprised advertising and mailing literature used by Petitioner in his mail order denture business, plus certified copies of the Federal Trade Commission cease and desist order and the Post Office Department fraud order (R. 250-300; 362-446).

Petitioner, on adverse examination, testified as to the chronology of his dental practice in Chicago for the period 1924 to 1960, as follows: one year at 625 Diversey, about five years at Elston and Belmont, six months at Kedzie and Roosevelt Road, six or seven months at Elmwood Park, five years at 3623 Armitage Avenue, and stated that this brought him up to 1958 or 1959, with a few years vacation beginning about 1940 (R. 146-151).

Petitioner also testified that for the period 1931 to 1948 he did not have an office where he was practicing dentistry and that he was engaged in farming in Wisconsin (R. 157-8). However, he then testified that he lived in Chicago from 1931 to 1948 and was practicing dentistry (R. 158).

When Petitioner was asked whether he was engaged in the mail order denture business from 1926 to 1938, he refused to answer on the ground that his answer might tend to

incriminate him (R. 161-2). He made a similar refusal when asked generally if he had ever been in the mail order denture business in Chicago (R. 163-4).

Thereafter, pursuant to court order, Petitioner testified that from 1933 to 1938 he did have a dental laboratory at 440 West Huron Street, Chicago, and that he started the laboratory business between 1926 and 1931 at 2601 West Belmont, where he also had a dental office (R. 236).

Petitioner testified that he used his name in connection with the laboratory business and that through national advertising in newspapers and magazines his business became world-wide and he grossed $231,000.00 or more per year at its peak, with an advertising budget not to exceed $3,000.00 per month (R. 243-5). In the Post Office fraud hearing it was disclosed that Petitioner expended $60,000.00 for advertising in 1936 (Rel. Ex. 10; R. 374-414).

Relator, Edgar T. Stephens, testified that he took photographs of Petitioner's Ashland Belmont Laboratory on October 22, 1959, which are Relator's Exhibits 1-3 (Rel. Ex. 1-3; R. 356, 186). On cross-examination he testified that Relator's Exhibits 12-37 were found in the files of the Illinois Department of Registration and Education in late 1959 or early 1960; that he was at that time an investigator for the Department, serving without compensation; and that he undertook the investigation of Petitioner at the request of the then Director of the Department, Vera M. Binks (R. 309).

The State Board of Dental Examiners filed its Report of Findings and Recommendations on September 19, 1961, in which Petitioner was found guilty of unprofessional conduct both as to operation of his dental laboratory business during the earlier years and also as to his professional association with Clark Dental Laboratory and the display ad-

vertising by that laboratory and Ashland Belmont Dental Laboratory in the later years, and also that Petitioner practiced dentistry under a name other than his own, and recommended that Petitioner's license be revoked (R. 326-339). Petitioner filed a motion for rehearing October 11, 1961 (R. 341-3), which was argued November 10, 1961 and denied February 5, 1962 (R. 349). The Board's recommendation was accepted by the Department and the revocation order was issued February 5, 1962 (R. 351).

Petitioner's complaint for administrative review was filed in the Circuit Court of Cook County, Illinois on February 16, 1962 (R. 2-6) and on November 27, 1963 that court entered an order affirming the order of revocation (R. 448-9).

ARGUMENT.

Two questions are presented by Petitioner (Petition, p. 2). The first question is based upon a false premise. It *assumes* that Petitioner's dental license was revoked "on the basis of matters which occurred from 20 to 25 years before". Such assumption is not borne out by the record in this case.

We refer to the opinion of the Illinois Appellate Court, where it is pointed out that the complaint of March 28, 1960 focuses on three areas of alleged violations: (1) operation of Petitioner's nationally advertised mail order denture business from 1926 to 1939; (2) Petitioner's professional association with Clark Dental Laboratory in Chicago, Illinois from 1957 to 1959; and (3) Petitioner's operation of the Ashland Belmont Dental Laboratory, in Chicago, Illinois, in 1959 and 1960 (Pet., pp. 1a, 2a).

The State Board of Dental Examiners, in its Report of Findings and Recommendations to the Director of the Department of Registration and Education, found Petitioner guilty of unprofessional conduct in *all three areas* and not in the one area only as mentioned by Petitioner (R. 326-339). The order of revocation of the Director of the Department of Registration and Education was based upon the Board's Report and Recommendations (R. 351). This order was affirmed by the Circuit Court of Cook County on administrative review (R. 448-9).

When the case was reviewed by the Illinois Appellate Court, it was held that in operating the Ashland Belmont Dental Laboratory, Petitioner violated the Illinois Dental Practice Act in at least two respects, practicing dentistry under a name other than his own and soliciting business through prohibited forms of advertising (Pet., p. 7a). These acts occurred in 1959 and 1960 (R. 164).

The Illinois Appellate Court found these grounds to be both adequate and valid for revocation of Petitioner's license and held it to be unnecessary to consider any of the other evidence (Pet., p. 7a).

Petitioner's association with the Clark Dental Laboratory during the years 1957-59 was also found by the State Board of Dental Examiners to be in violation of the Illinois Dental Act in several respects (R. 335-6).

Thus it is clear that the assumption made by Petitioner in his first question presented to this court, that revocation was "on the basis of matters which occurred from 20 to 25 years before", is not valid. The Department revoked the license on the basis of evidence covering *three* different periods of time and the Illinois Appellate Court affirmed solely on the basis of the most recent evidence, current at the time Petitioner testified on July 18, 1960 (R. 144).

Petitioner's Second Question.

The second question presented by Petitioner is whether due process under the Fourteenth Amendment has been accorded to a dentist when his dental license of 35 years is revoked upon a record containing matters which occurred from 20 to 25 years earlier. Basically, the only challenge to what we shall refer to as the "earlier evidence" is its *age*. To be sure, at page 7 of the Petition it is admitted by Petitioner that his conduct of the mail order denture business would be unlawful today, but he intimates that it was not as clear before as it is now and, besides, he states that *this court specifically passed upon Petitioner's conduct* and expressly found that Petitioner "did not believe, nor under our system of jurisprudence was he bound to believe, that a fraud order destroying his business was justified by the facts or by the law." (Citing *Commissioner of Internal Revenue* v. *Heininger*, 320 U. S. 467, 472 (1943)).

Also at page 4 of the Petition, it is stated that this court, in the same case, "was required to pass upon the nature of the Petitioner's mail order business from 1933 to 1938".

Of course, the above references to Petitioner's tax case are intended to imply that this court, at that time, held that Petitioner's mail order business was legitimate and not in violation of Illinois law. This court held no such thing and clearly said so. The case involved the question of whether litigation expenses of $36,600.00 paid by Petitioner were properly deductible as business expenses from his gross income from the mail order denture business which amounted to $287,000.00 for 1937 and $150,000.00 for 1938.

At no point in the opinion of this court is there any indication that the Illinois Dental Practice Act was under consideration or whether Petitioner had violated that statute. Holding that Heininger was not bound to believe in advance that he was guilty of fraud is far removed from a holding that Petitioner's business was not unlawful.

At page 470, this court stated:

> "Our inquiry therefore is limited to the narrow issue of whether these expenses are 'ordinary and necessary' within the meaning of Section 23 (a)". (Revenue Acts of 1936 and 1938).

This court further stated at page 472:

> "Surely the expenses were no less ordinary or necessary than expenses resulting from the defense of a damage suit based on malpractice, or fraud, or breach of fiduciary duty. Yet in these latter cases legal expenses have been held deductible without regard to the success of the defense."

The opinion of this court continues at page 474:

> "The language of Section 23 (a) contains no express reference to the lawful or unlawful character of the business expenses which are declared to be deductible.

> And the Brief of the Government in the instant case expressly disclaims any contention that the purpose of the tax laws is to penalize illegal business by taxing gross instead of net income."

This court further stated, at page 475:

> "We hold therefore that the Board of Tax Appeals was not required to regard the administrative finding of guilt under 39 USC Secs. 259 and 732, 9A FCA title 39, Secs. 259, 732, as a rigid criterion of the deductibility of Respondent's litigation expenses."

To further dissipate this mirage about whether Petitioner's mail order business was lawful or unlawful in 1938 and prior years, it is only necessary to turn to the Illinois Dental Practice Act for those years. In 1927, for example, that statute authorized the revocation of a dental license for trying to obtain dental practice by false or fraudulent advertising (Cahill Illinois Revised Statutes, 1927, Chapter 91, Paragraph 78).

By 1933, Section 18-b had been added to the Dental Practice Act. This section authorized the revocation of a dental license for advertising in any manner to deceive the public, for claiming superiority over other dental practitioners, for publishing reports of cases (testimonials), advertising fees charged or materials used, or the use of any media whatever calling attention of the public to any person practicing dentistry (Cahill Illinois Revised Statutes, 1933, Chapter 91, Paragraph 88 (2)). The evidence proved conclusively that Petitioner was guilty of violating all of these provisions. There can be no doubt about the unlawful character of Petitioner's mail order denture business at any time.

Next we turn to the myth about Petitioner abandoning the mail order denture business in 1938 and having his license restored by the Department of Registration and Education in June, 1938 (Pet., pp. 4, 7). There is no basis in

this record for such statement. Petitioner cites pages 138-42, 327, and 329 of the record. All three references are to *argument* of Petitioner's counsel and are not references to evidence.

The record actually shows that Petitioner had *not* terminated his mail order business in June, 1938. In fact, it was on June 6, 1938 that Petitioner obtained an injunction against enforcement of the Post Office Department fraud order against him, and this injunction was not dissolved until October 27, 1939 (Rel. Ex. 11; R. 415).

The Board of Dental Examiners found Petitioner owned and operated the mail order business from 1926 to 1939 (R. 330). Also in the opinion of this court, cited at page 4 of the Petition, (*Commissioner of Internal Revenue* v. *Heininger*, 320 U. S. 467, 64 S. Ct. 249), it is stated at page 472:

> "Therefore he (Petitioner) *did not voluntarily abandon the business* but defended it by all available legal means." (Emphasis ours.)

Another untenable argument by Petitioner is found on page 7 of the Petition, where it is stated that the Department of Registration and Education received this case in 1960 when it was discovered that Petitioner's dental office was at the same address as a dental laboratory, a situation held to be proper and lawful by the Illinois Supreme Court, citing two cases, (*Menning* v. *Department of Registration*, 14Ill. 2d 553, 153 N. E. 2d 52 (1958); *Bruce* v. *Department of Registration*, 26 Ill. 2d 612, 187 N. E. 2d 711 (1963)).

Examination of these two cases will show that whether a dentist has his office at the same address as a dental laboratory is not the crucial question at all. The important issue is whether the dentist has associated himself professionally with a dental laboratory which is operating in violation of

the Dental Practice Act. In those two cases the court held the evidence of violations to be insufficient.

Petitioner next states that the *only reason* which can possibly explain the revocation here is that Petitioner's license was revoked because of his 1933-1938 activities in the mail order business.

Of course, the Illinois Appellate Court did not agree with this argument and considered *only* the later evidence, having to do with Ashland Belmont Dental Laboratory, where Petitioner was found to have been in violation (Pet., p. 7a).

Petitioner refers to the earlier evidence as an "avalanche of prejudicial and inflammatory material" (Pet., p. 8). That it was adverse to Petitioner there can be no doubt, but this can hardly make it prejudicial and inflammatory in the sense that it would be inadmissible. Petitioner says this earlier evidence was not "then before the court" (Pet., p. 9). An examination of the complaint before the Illinois State Board of Dental Examiners shows clearly that the earlier activities of Petitioner were included and were in issue (R. 43-65).

Petitioner then states that the Department of Registration and Education had actually passed upon these very charges and had restored Petitioner's license in June, 1938 (Pet., p. 9). The citations given in support of this statement comprise no evidence whatever—only argument of Petitioner's counsel. As a matter of fact, the evidence in question had not been previously considered by the Department in a hearing, and, as pointed out earlier in this Brief, there was no restoration of Petitioner's license.

Petitioner argues that the hearing was unfair, that the evidence as to the mail order business was prejudicial and inflammatory but at no place does he face up to the question

of whether or not the earlier evidence was actually inadmissible. He injects an argument of former adjudication but he failed to assert a formal plea of res adjudicata at any time.

Petitioner argues that the earlier evidence is too old, but he does not assert a defense of laches or plead a Statute of Limitations. Doubtless the reason such defenses are not formally pleaded is that they are actually not available to Petitioner since they do not apply to a sovereign state in proceedings brought in the name of the people to revoke a license previously issued by that state.

It has been held that lapse of time will not bar proceedings to revoke a license to practice law and we suggest that the same reasoning applies to the professions involving the healing arts, since similar questions of public interest are involved.

In the case of *In Re Anderson*, 370 Ill. 515, 520, the court stated:

> "The contention that lapse of time may be urged against disbarment proceedings is not well taken. We will not refuse to hear charges against an attorney because of the expiration of some period of time unless it would be unjust or unfair to compel him to answer such charges (*People* v. *Sherwin*, 364 Ill. 350; *People* v. *Hooper*, 218 Ill. 313)".

Since the earlier evidence here comprises documents, mostly advertising material, including photographs and facsimile signatures of Petitioner, easily recognizable by him, as his testimony revealed, there was no unfair advantage taken of him.

The revocation of a physician's license issued in 1927 was upheld by the Supreme Court of Wisconsin even though the proceedings were started as late as 1945 (*State of Wis-*

consin v. *Josefsberg*, 275 Wis. 142, 81 N. W. 2d 735, 63 A L R 2d 1071 (1957). Additional cases involving lapse of time in the matter of revocation of licenses of professional persons are set forth in the annotation at 63 A L R 2d 1080.

CONCLUSION

The first question raised by Petitioner assumes that Petitioner's license was revoked on a basis of matters occurring 20 or 25 years before, whereas the record clearly shows that the revocation order was based upon evidence relating to three different periods of activity, two of which were from 1957 to 1960, including the very year and month of the hearings. The order of revocation of the Illinois Department of Registration and Education was first reviewed by the Circuit Court of Cook County and affirmed. It was then argued orally and through printed briefs in the Illinois Appellate Court. That court held the evidence of violations of the Illinois Dental Practice Act for the years 1959 and 1960 was sufficient to justify revocation of Petitioner's license and that it was not necessary to consider the earlier evidence. The Supreme Court of Illinois denied a petition for leave to appeal to that court.

We respectfully suggest that this case has been thoroughly and carefully considered by the Illinois Department of Registration and Education and the respective courts of Illinois. The Petitioner has had extensive and fair hearings from the very beginning. The Petition For Writ Of Certiorari should be denied.

We have been requested by counsel for Relator, Edgar T. Stephens, to state that Relator, as Respondent to the Peti-

tion, joins in this Answer to the Petition for Writ of Certiorari.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 N. La Salle St., Suite 900,
Chicago (1), Illinois, (FI 6-2000),
Attorney for Respondents, Department of Registration and Education of the State of Illinois and William Sylvester White, Director of Registration and Education.

RICHARD A. MICHAEL,
EDWARD A. BERMAN,
Assistant Attorneys General,
Of Counsel.